



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

FUNDA et al

Atty. Ref.: 4662-121; Confirmation No. 2120

Appl. No. 10/564,635

TC/A.U. 1619

Filed: January 13, 2006

Examiner: Greene

For: POWDEROUS FORMULATIONS OF FAT-SOLUBLE ACTIVE INGREDIENTS

* * * * *

July 20, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE

This is responsive to the Official Action of February 16, 2010 petition for which a three month extension of time is requested, the relevant amount being paid with this response. It also includes the examiner's communication of March 3, 2010 providing an English translation of Japanese document S 45-38348.

Claims 1-21 are pending in the application and all claims stand rejected as being "obvious" therefore unpatentable over Schneider (US 5,356,636) in view of Bewert (EP 0982038), Koderia (US 6,455,273) and Aria (US 4,921,705); and as evidenced by Gerrard (Trends in Food Science and Technology, 13, 2002, pages 391-399) and Hamaguchi (US 5,127,953).

Attached to this response is the declaration of inventor Elger Manuel Funda made July 16, 2010. The declaration includes comparison tests conducted with various alternate proteins

including gelatin, rape seed protein, soy protein and rice protein. Attempts were made to conduct comparisons with wheat proteins but it was not possible to produce a stable emulsion and therefore no dry powder could be produced.

The data demonstrate that none of the proteins tested were as effective as milk protein in terms of their stabilizing features.

While one skilled in the art may postulate as to the possible performance of other proteins, this information provides data supporting the applicants' position that surprisingly better results are obtained in terms of stability over a period of weeks with milk protein than with rape seed, soy or rice proteins. Their position is based upon facts, not conjecture or attempts to tweeze out of the various cited documents what may or may not be relevant to the claims now under review.

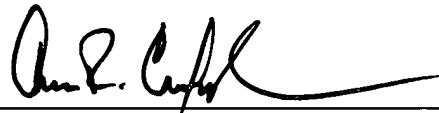
The non-statutory obviousness-type double patenting rejection stated on pages 14-17 of the Official Action is noted but as this is a provisional rejection applicants will address it at such time as allowable subject matter has been indicated.

For completion of the record, counsel notes that the current Official Action is not a Final Rejection as indicated, for instance, in the Office Action Summary item 2b as well as the Bibliographic data in PAIR. Thus, the discussion on page 18 concerning finality of the Action is incorrect. Counsel confirmed this with Examiner Greene on March 1, 2010.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



Arthur R. Crawford
Reg. No. 25,327

ARC:eaw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100